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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION THREE

In re A.C., a Person Coming Under the  
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

E.C. et al.,

Defendants and Appellants.

G049692

(Super. Ct. No. DP022456)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, Dennis J.  
Keough, Judge. Affirmed.

Sharon S. Rollo, under appointment by the Court of Appeal, for Defendant  
and Appellant V.M.

Marsha F. Levine, under appointment by the Court of Appeal, for  
Defendant and Appellant E.C.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Aurelio  
Torre, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minor.

## **INTRODUCTION**

Appellants V.M. (mother) and E.C. (father) appeal from the termination of their parental rights to their son A.C. (child) under Welfare and Institutions Code section 366.26 (all further undesignated statutory references are to this code).

Mother contends the court abused its discretion by denying her petition for modification under section 388, subdivision (a), and by failing to apply the beneficial relationship exception to termination found in section 366.26, subdivision (c)(1)(B)(i). Father argues if mother's appeal is found to have merit, we must also reverse as to him.

Respondent Orange County Social Services Agency (SSA) argues the court acted well within its discretion in denying mother's petition for modification, and the court correctly refused to apply the beneficial relationship exception.

We affirm. Mother did not meet her burden to show the proposed modification was in the best interests of the child. She also did not meet her burden with respect to the beneficial relationship exception to the termination of her parental rights.

## **FACTUAL AND PROCEDURAL BACKGROUND**

This is our second opinion in this case. Our first opinion denied mother's petition for writ of mandate challenging the sufficiency of the evidence to support the August 2013 orders terminating her reunification services and setting a permanency planning hearing (.26 hearing). (*Veronica M. v. Superior Court* (Dec. 10, 2013, G048848) [nonpub. opn.]) Father was not a party to the writ proceeding.

The circumstances which led to the August 2013 orders challenged in the writ proceeding are detailed in our prior opinion and need not be repeated here. Suffice it to say that during the reunification period, mother failed to maintain consistent contact with the child, failed to attend many of the child's important medical and developmental delay related appointments, and failed to make significant progress in resolving either her past domestic violence experiences, or the persistent mental illness that has plagued her since adolescence and which contributed to the child's removal in the first instance.

### *1. Post-Reunification Period SSA Reports and Pre-.26 Hearing Developments*

As of October 2013, mother's eight hours of supervised visitation with the child at her shelter residence were going well. Mother was interacting well with the child, engaging in age-appropriate play activities, properly supervising him, and engaging in positive and affectionate interactions with him.

On October 15, pursuant to mother's motion, the court increased her visitation to 10 hours per week, but denied her request for unmonitored visits.

The December SSA report noted the child continued to deal with developmental delays, and had problems with aggressive behaviors. The child was receiving treatment through the Regional Center of Orange County to address the delays, and the child's caretaker, Karla H., attended all recommended appointments. The child was well adjusted to his placement and appeared to be very happy. Karla and her husband were committed to adopting and providing him a permanent home. Mother's visits continued to be appropriate.

On December 19, mother filed the section 388 petition at issue in this appeal seeking custody or an additional six months of reunification services and unmonitored visits. Mother continued to reside in the same shelter and was participating in a range of therapeutic services offered there, including completion of a parenting course, participating in domestic violence courses, and was attending individual and group counseling. Mother had been evaluated and psychotropic medication had been deemed unnecessary at that time. Mother's case manager lauded her hard work since coming to the shelter, and mother's counselor noted her consistent attendance and participation in counseling sessions.

The court granted mother a full hearing on her 388 petition, and ordered that it be conducted concurrently with the .26 hearing in early 2014.

## *2. The Combined Section 388 and .26 Hearing*

### *Testimony of Marissa Perez*

Marissa Perez was a psychiatric social worker at the Los Angeles County Department of Mental Health where mother had been a client since August 2013. Perez evaluated mother's medical and psychological history and her mental status. Although Perez was not licensed to prescribe medication, she was licensed to recommend to a psychiatrist that medication be prescribed, and to make involuntary commitment determinations, at which point the client would be evaluated by a psychiatrist. The court accepted Perez's opinions as a therapist.

Perez diagnosed mother as suffering posttraumatic stress disorder (PTSD). Perez never thought mother needed psychotropic medication. Mother had not seen a psychiatrist, because she had not presented "persistent [symptoms] - chronic or severe symptoms." In addition, in the early portion of the treatment mother was eight months pregnant, and could not take psychotropic medications.

Mother was in a six-month program designed for trauma victims, which included "skills and techniques to identify their symptoms, [and] the circumstances under which the trauma occurred." Mother attended weekly group and monthly individual classes to improve her functioning, to overcome her trauma, to return to society with new skills, and to become a better mother. Mother had made progress in all parts of her treatment plan and was very motivated. Perez had seen mother progress in identifying her needs, rights, and responsibilities, and her awareness of resources available to help her. Mother also had made substantial progress with her PTSD. Her participation had been impeccable, including doing her homework and participating in group and individual counseling.

Perez believed mother still was suffering from postpartum depression. She had not completely dealt with her family dynamics, and individual counseling would help her. Mother had a major depressive disorder, of which the PTSD was a symptom.

However, mother's depression was in remission and she was not showing any sign of it. Mother was open to taking psychotropic medication if her condition worsened.

Mother acknowledged to Perez she had been very depressed and found it difficult to hold the child after his birth, behavior typical of postpartum depression. Mother told Perez that after the child was diagnosed with failure to thrive, mother saw a psychiatrist and took prescribed psychotropic medications. Mother now understood the importance of medical care for her children, and recognized the child had not been fed properly.

Mother came to all her sessions with her newborn son Abraham, and Perez had no concerns about mother's care of him. Perez had not observed any symptoms of postpartum depression after mother gave birth to Abraham.

Mother disclosed the child had been detained because he was in an environment that included domestic violence. Mother was aware of and had addressed the domestic violence issue. Mother denied any domestic violence in mother's current relationship with Abraham's father.

Perez believed mother had learned the hard way that her children came first, and she was in a better position to make better decisions now. A plan was developed for mother to take care of her children in the shelter, and she could remain there longer than six months. If mother were in need of more assistance, Perez would provide it.

#### *Testimony of Rusmeralda Garcia*

Rusmeralda Garcia was the social worker who had supervised mother's visits with the child since about August 2013. Mother was on time for visits, and she brought her newborn, Abraham, with her. Mother and the child were affectionate with each other as were the child and Abraham. Mother was able to supervise both children with no problems.

Mother interacted with the child lovingly and took care of him, bringing food, promptly changing his diapers, and playing with him. The child looked to mother for comfort and recognized her as his mother, calling her “Mommy.” At the end of visits, although the child smiled and kissed mother, he did not appear upset and did not cry when separated from her.

*Testimony of John Petrie*

John Petrie was the SSA group counselor who monitored visits between the child and mother starting in late June 2013. Petrie observed the child and mother to be mutually affectionate, and the two engaged in age-appropriate play and activities. Mother was prompt in parenting the child, and used time-outs to discipline him. Mother brought her newborn to visits and was able to provide appropriate care for both children. Mother was responsive to his suggestions. The child found comfort with mother and enjoyed his visits, which ended with hugs and kisses, but without distress.

*Testimony of Eileen Lancaster*

Eileen Lancaster facilitated most of the domestic violence classes mother attended at the shelter. Mother was an active participant, seemed “very alert,” and completed the program. Lancaster never had any concerns about mother’s mental health.

*Testimony of Rebecca Younger*

Rebecca Younger was the founder and executive director of the shelter where mother had lived since July 2013. Mother was required to participate, to be self-sufficient, and to complete daily chores. Her schedule was built around programs she was attending and visits with the child. Although she had no drug abuse history, mother also attended Narcotics Anonymous meetings weekly, and all of mother’s drug tests had been negative.

Mother had met the shelter’s requirements. She paid for her own transportation and paid a monthly fee to the shelter of \$100 for herself and \$50 for Abraham, which was for all of their living expenses. Mother saved the rest of the money

she was receiving from welfare. Mother had committed herself to the shelter for one year from July 2013, but there was no timetable, and she could stay as long as she complied with the shelter's requirements. If a client were to leave, the shelter would help with transition time and would refer a client to a multiservice center.

Younger had no concerns about mother's care for Abraham, although mother had an open case with the Los Angeles County Department of Children and Family Services (LADCFS) for Abraham. To her knowledge, mother had no case plan requirements. Mother's calendar was too full for her to work on job skills, but this was in the future. Mother would be able to work, as the shelter had a free childcare program. The shelter could accommodate mother and her two children.

Younger had observed mother's visits with the child at the shelter, and they were positive. Mother parented both children, and they were affectionate with each other. She had no concerns about mother's mental health. Younger believed if the child were returned, they would need time to bond.

#### *Testimony of Mother*

Mother had lived in the shelter for seven months, was committed to remaining until July 2014, and had discussed the possibility of staying an additional year if the child were returned to her care. She had appropriate housing for both children, and sufficient finances to care for them.

Other than \$150 paid to the shelter, mother had no other expenses to live there, and she was saving money from the \$536 she was getting from welfare each month. As to future employment, she wanted to go to nursing school.

Mother admitted she had failed to properly care for the child. She had not realized he was losing weight nor the impact of the domestic violence, and she had not followed through with his medical care. The child's father did not help. The child had been removed in April, and she had remained with his father until July 2012 when he was incarcerated for domestic violence.

Mother had been depressed before, but had benefited from the many programs in which she participated. Mother had completed a parenting class and learned appropriate discipline skills. She also learned about the cycles of violence. She had no plans to date anyone, and wanted to focus on her children.

Mother did not know her mental health diagnosis but did not feel depressed at this time. She had suffered postpartum depression with the child, but not with Abraham. She was not currently on any medications, but she would follow medical advice if told to take it.

Mother had been involved with LADCFS for Abraham, and the social worker had told her to remain in the shelter and to comply with the shelter's requirements. LADCFS had left Abraham in her care. She was following all medical advice for Abraham.

Mother began attending the child's behavior therapy sessions in mid-November 2013, and had attended "at least six" such sessions. Mother had not attended any of the child's doctor's appointments since August 2013. Karla invited her to an early January appointment but mother could not attend.

Mother had recently attended the child's two-year physical. The doctor said the child was underweight, and he had anemia. The doctor advised her how to keep the child healthy. If the court would return the child, she would follow up with all his medical care and attend to his health. She had attended appointments with the child in November and December and was not told he was underweight or anemic.

Mother believed she was ready to have the child in her care because she was safely caring for Abraham, was no longer depressed, and wanted the children to grow up as brothers. She felt confident she could properly care for the child and believed it was in his best interests to live with her, as they were bonded to each other. Mother loved being with both of her children. She described her visits with them as enjoyable



and affectionate. The child went to her for comfort when he cried. The child called her “mama,” but mother admitted the child also referred to Karla as “mama.”

Mother attributed her previous lapse in visitation with the child to her past depression, but she was working hard for the depression not to recur. She had missed four or five visits since August 2013, due to medical reasons or because of court dates involving LADCFS and Abraham.

Mother stressed she was willing to participate in any additional services deemed necessary by the court, and felt comfortable accessing community support resources upon her eventual departure from her current shelter.

#### *Testimony of Karla*

The child had been in Karla’s care since April 2012. Due to his developmental issues, in April 2013 the child began appointments with Regional Center staff. Karla informed mother of these sessions from the outset.

Karla also began behavioral parenting sessions with the child in October 2013, with mother informed of these sessions. Mother had attended two visits with the therapist/Regional Center in November 2013. Karla believed these sessions had helped her learn to deal with the child’s needs and some of his aggressive behaviors.

Karla had taken the child to 17 doctor’s appointments since his placement in her care. For a while in 2013, Karla was unable to contact mother. After she resumed contact with mother, she informed mother of the child’s medical appointments. Mother failed to attend three appointments for the child after Karla resumed contact with mother, but mother had recently attended one appointment.

Mother had not visited the child during the period of lost contact although she had sent Karla some online messages during this period. Karla clarified she simply had no phone contact with mother. Mother had also sent Karla online messages asking how the child was doing, and asking about the child’s doctor’s appointments and mother possibly attending these appointments. Karla had discussed the child’s twice-weekly

Regional Center appointments through online messages in April 2013. Mother had visited the child at Karla's home three times in December 2013.

Karla had been in charge of meeting all the child's needs and ensuring his attendance at medical and developmental appointments. Karla loved the child and wanted what was best for him, but admitted she would be hurt if the child was removed from her care. If mother's rights were terminated, Karla would adopt the child.

### *3. Juvenile Court Rulings*

The court found it was in the best interests of the child to deny mother's section 388, subdivision (a) petition for modification, although the court lauded mother's "undoubted change of circumstances" since August 2013. The court also found the beneficial relationship exception under section 366.26, subdivision (c)(1)(B)(i) did not apply. Finally, the court found adoption and termination of parental rights was in the child's best interests, and terminated the parental rights of mother and father. This appeal followed.

## **DISCUSSION**

Mother maintains the court abused its discretion by denying her section 388 petition, because the evidence showed both changed circumstances and that modification was in the child's best interests. Mother also asserts the court mistakenly terminated her parental rights, because the evidence supported the beneficial relationship exception.

### *1. Petition for Modification*

Section 388, subdivision (a), permits any parent to petition for a modification of any order on change of circumstance grounds. The petitioner must prove, by a preponderance of the evidence, there are changed circumstances and the child's welfare requires such a modification. (California Rules of Court, rule 5.570(h)(1); *In re D.B.* (2013) 217 Cal.App.4th 1080, 1089.) We review for the court's ruling abuse of discretion. (*In re J.C.* (2014) 226 Cal.App.4th 503, 525-526.)

Once reunification services have been terminated, the parent's interest in reunification no longer takes precedence. (*In re Edward H.* (1996) 43 Cal.App.4th 584, 594.) Instead, the focus shifts to the child's need for permanency and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307, 309.) The court must take into account this shift of focus, and there is a rebuttable presumption that stability in an existing placement is in the best interests of the child, particularly when such placement is leading to adoption by the long-term caretakers. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

There was no dispute about the existence of changed circumstances in this case. As the court noted, "certainly mother's circumstances is [*sic*] different, very different than they were at the August [2013] hearing." The dispute was whether those changed circumstances were sufficient to rebut the presumption that the stability of continuing the existing placement was in the best interests of the child, particularly since that placement was leading to adoption by Karla and her husband. The court concluded those changed circumstances were insufficient to rebut the presumption, and the child's best interests would not be served by returning him to her care.

Assuming without deciding mother met her burden to prove changed circumstances, she did not show modification was in the child's best interests.

First, mother has continuing mental health issues that have not been fully addressed. The court found there was some belief her problems were less serious than in actuality, and it was troubled there had been no psychiatric evaluation or a medication regimen, especially because mother had earlier been diagnosed with a recurring "major depressive disorder" and prescribed antidepressants for improved functioning. (*Veronica M. v. Superior Court, supra*, G048848 at p. 13.)

The court was also concerned with mother's failure to attend the child's developmental therapy sessions, stating "there was not the level of engagement that one would hope for." The court even found mother did not seem to have the same insight or

understanding that Karla has with respect to the child's developmental issues, "essentially minimiz[ing] the problems and challenges that he faced."

The court also examined visitation and the nature of the bond between mother and the child. The child was removed at a young age and has been living with Karla for two years. Although mother had recently consistently visited the child, there was not enough evidence the child had a sufficient emotional attachment to or bond with mother or Abraham. Given that, and the child's special needs, mother had not established it would be in the child's best interest to be returned to her.

Under these circumstances, the court did not abuse its discretion when it determined mother had not made her case for a modification. The court had legitimate and lingering concerns regarding many of the circumstances that prompted the child's original detention. The court correctly determined the child's best interests are not to further delay permanency and stability in favor of rewarding mother for her hard work and efforts to reunify.

## *2. Beneficial Relationship Exception and Termination of Parental Rights*

Mother maintains the court erred by not properly applying the beneficial relationship exception, which provides an exception to the preference for adoption where the court finds that termination of parental rights would be detrimental to the child because "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) The parent bears the burden of showing both regular visitation and contact and benefit to the child in maintaining the parent/child relationship. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466; *In re Fernando M.* (2006) 138 Cal.App.4th 529, 534.)

Mother had the burden to prove both elements of the beneficial relationship exception. First, she had to show the existence of a beneficial parent/child relationship. We review the court's determination for substantial evidence. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.)

In this case, there was substantial evidence to support the finding mother had not established the substantial benefit needed to trigger the exception. The child was just three months old when he was detained. Except for those first months, the child had been cared for by Karla and her husband for his entire life. While mother's visits after her reunification services were terminated were positive, the amount of time she spent with the child was a small fraction of the time necessary to create a parental bond. "To meet the burden of proof for the section 366.26, subdivision (c)(1)(A) exception, the parent must show more than frequent and loving contact or pleasant visits." (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at pp. 953-954.)

More importantly, what the child needed most was a parent who had the insight and understanding to address the child's developmental issues. While we applaud mother's efforts and progress, for the two years this case has been pending, mother has demonstrated she is not that parent. "The reality is that childhood is brief; it does not wait while a parent rehabilitates himself or herself. The nurturing required must be given by someone, at the time the child needs it, not when the parent is ready to give it." (*In re Debra M.* (1987) 189 Cal.App.3d 1032, 1038.)

Second, mother had to show the parental relationship is sufficiently compelling to such that it would be detrimental to the child to terminate that relationship. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314.) In other words, "the [parental] relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents . . . ." (*In re J.C.*, *supra*, 226 Cal.App.4th at pp. 528-529.) We review this for abuse of discretion. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315.)

Courts have looked to the age of the child, the amount of time the child has been in the parent's custody, the positive or negative effects of their interactions, and the child's particular needs as factors to be considered when applying the beneficial relationship exception. (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 467.)

The court properly exercised its discretion when it decided mother had not shown a compelling reason to find detriment to the child if her parental rights were terminated. The child is still quite young, and Karla and her husband have demonstrated their ability to meet his special needs. Likewise, substantial evidence supports the court's determination that maintaining a relationship with mother does not outweigh the benefits of adoption. We may not disturb the court's decision to terminate her parental rights.

**DISPOSITION**

The orders are affirmed.

THOMPSON, J.

WE CONCUR:

MOORE, ACTING P. J.

ARONSON, J.